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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,914	11/18/1999	MARTIN HERKLOTZ	2565/52	6832

26646 7590 04/30/2003

KENYON & KENYON  
ONE BROADWAY  
NEW YORK, NY 10004

EXAMINER

FREAY, CHARLES GRANT

ART UNIT

PAPER NUMBER

3746

DATE MAILED: 04/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/308,914	HERKLOTZ ET AL.	
Examiner	Art Unit		
Charles G Freay	3746		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 19 March 2003 .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 20-30 and 33-47 is/are pending in the application.  
4a) Of the above claim(s) 27,28,37-43,46 and 47 is/are withdrawn from consideration.

5)  Claim(s) 20-26,29,30 and 33-36 is/are allowed.

6)  Claim(s) 44 and 45 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6)  Other: \_\_\_\_\_

## DETAILED ACTION

This office action is in response to the amendment of March 19, 2003. In making the below rejections the examiner has considered and addressed each of the applicants arguments.

### ***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on March 19, 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 44 and 45 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Vincent (USPN 5,074,755).

Vincent discloses a pump having a piston pump unit (18), a membrane unit (11), a hydraulic unit (the open connection between the pump and membrane units), a measuring unit (48) which measures the displacement of the pump piston and sends a

signal to a controller (50) which then controls the pump. The unit is arranged on a chassis (10). There is also a pump head (26) with an inlet (32) and an outlet (34).

Claim 44 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schrenker (USPN 4,624,625).

Schrenker discloses a membrane unit (unnumbered), a pumping unit (11), a hydraulic unit (the open connection between the pump and membrane units), a measuring devise (17), and a control unit for controlling the pump based on signals from the measuring devise. There is also a hydraulic sensor (29) which measures the pressure of the fluid within the hydraulic unit and there is a pump head with an inlet (12) and an outlet (unnumbered, the line leading to element 21).

#### ***Allowable Subject Matter***

Claims 20-26, 29, 30 and 33-36 are allowed.

#### ***Response to Arguments***

The applicants amendments and arguments have overcome the objections to the drawings and the specification and the rejections under 35 USC 102 and 103.

Non-elected claims 27, 28, 37-43 and 46-47 remain in this application. The examiner notes that claims 27 and 28 depend from allowable claim 20. The examiner notes that he does not believe that these claims in combination with claim 20 form pump as disclosed in the specification and the drawings. It is the examiners position that in the embodiment of Fig. 3 the interspace between the diaphragms forms the hydraulic unit.

Therefore this embodiment does not have both a hydraulic unit and a two layer membrane.

Because the examiner, through typographical error, did not include the rejections of claims 44 and 45 in the first office action this office action is non-final.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G Freay whose telephone number is (703)308-0639. The examiner can normally be reached on Monday through Friday 10:00 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on (703)308-0102. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9302 for regular communications and (703)872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0861.



Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
April 30, 2003